

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
NO: 7:11-CR-00061-BR

UNITED STATES OF AMERICA,

v.

REGGIE ANDRE BECKTON

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ORDER

This matter is before the court on defendant's various *pro se* filings since 31 March 2016, including a motion to vacate or dismiss his judgment for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(h)(3), (DE # 329). The government has filed a motion to dismiss defendant's motion to vacate. (DE # 331.) It contends that defendant's motion to vacate is, in substance, defendant's second 28 U.S.C. § 2255 motion over which this court lacks jurisdiction. (DE # 332.) The court agrees.

By way of his motion to vacate or dismiss for lack of subject matter jurisdiction, defendant is attempting to bring a new claim to challenge his conviction and sentence. As such, his motion must be construed as one pursuant to § 2255. See United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003) (explaining how courts should determine whether a motion for reconsideration under Rule 60(b) is proper versus "a 'successive [application] in 60(b)'s clothing'" and recognizing that "a motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application" and that "new legal arguments . . . will usually signify that the prisoner is . . . continuing his collateral attack on his conviction or sentence" (citations omitted) (alteration in original)). Because defendant has previously filed a § 2255 motion, he must seek authorization from the Fourth Circuit Court of Appeals to file a second or

successive § 2255 motion. See 28 U.S.C. §§ 2244(b), 2255(h).

The government's motion is ALLOWED. Defendant's motion to vacate is DISMISSED WITHOUT PREJUDICE. The court finds that defendant has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, a certificate of appealability is DENIED.

To the extent defendant's other filings are motions, they are DENIED.

This 16 June 2016.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt  
Senior U.S. District Judge